



[BILLING CODE: 6750-01S]

FEDERAL TRADE COMMISSION

[File No. 142 3117]

TXVT Limited Partnership, Doing Business as Trophy Nissan; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order -- embodied in the consent agreement -- that would settle these allegations.

DATES: Comments must be received on or before January 22, 2015.

ADDRESSES: Interested parties may file a comment at

<https://ftcpublic.commentworks.com/ftc/tvxtlimitedconsent>

online or on paper, by following the instructions in the Request for Comment part of the

SUPPLEMENTARY INFORMATION section below. Write “TXVT Limited Partnership, a Texas Limited Partnership, d/b/a Trophy Nissan - Consent Agreement; File No. 1423117” on your comment and file your comment online at

<https://ftcpublic.commentworks.com/ftc/tvxtlimitedconsent> by following the instructions on the web-based form. If you prefer to file your comment on paper, write “TXVT Limited Partnership, a Texas Limited Partnership, d/b/a Trophy Nissan - Consent Agreement; File No. 1423117” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW,

Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Luis Gallegos, (214) 979-9383, Southwest Region, 1999 Bryan Street, Suite 2150, Dallas, TX 75201-6808.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 23, 2014), on the World Wide Web, at <http://www.ftc.gov/os/actions.shtm>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before January 22, 2015. Write “TXVT Limited Partnership, a Texas Limited Partnership, d/b/a Trophy Nissan - Consent Agreement; File No. 1423117” on your comment. Your comment - including your name and your state - will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone’s Social Security number, date of birth, driver’s license number or other state identification number or

foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any “[t]rade secret or any commercial or financial information which . . . is privileged or confidential,” as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).¹ Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/tvxtlimitedconsent> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that website.

If you file your comment on paper, write “TXVT Limited Partnership, a Texas Limited Partnership, d/b/a Trophy Nissan - Consent Agreement; File No. 1423117” on your comment and on the envelope, and mail your comment to the following address: Federal Trade

¹ In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before January 22, 2015. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission ("FTC") has accepted, subject to final approval, an agreement containing a consent order from TXVT Limited Partnership, d/b/a Trophy Nissan. The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the FTC will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

The Respondent is a motor vehicle dealer. The matter involves its advertising of the purchase, financing, and leasing of its motor vehicles. According to the FTC complaint, Respondent has advertised that when a consumer trades in a used vehicle in order to purchase a new vehicle and pays \$1.00, Respondent will pay off the balance of any loan or lease agreement on the trade-in vehicle such that the consumer will have no remaining obligation for any amount

of that loan or lease. The complaint alleges that in fact, when a consumer trades in a used vehicle with negative equity (i.e., the loan or lease balance on the vehicle exceeds the vehicle's value), pays \$1.00, and purchases another vehicle, Respondent does not pay off the balance of the loan or lease agreement on the trade-in vehicle such that the consumer will have no remaining obligation for any amount of that loan or lease agreement. Instead, the Respondent includes the negative equity from the trade-in in the loan for the newly purchased vehicle. The complaint alleges therefore that the representation is false or misleading in violation of Section 5 of the FTC Act.

The complaint also alleges that Respondent has advertised that Respondent would match consumers' income tax refund for use as a down payment on an automobile. The complaint alleges that Respondent's advertisement did not disclose adequately additional terms pertaining to the offer, such as that Respondent would match only up to \$1,000 of consumers' income tax refund. The complaint alleges therefore that the failure to disclose adequately the additional terms is deceptive in violation of Section 5 of the FTC Act.

The complaint further alleges that Respondent advertised that consumers could lease advertised vehicles at terms prominently stated in the advertisements, including, but not necessarily limited to, the monthly payment amount. The complaint alleges that Respondent's advertisements did not disclose or disclose adequately additional terms pertaining to the lease offer, such as the total amount of any payments due at lease inception. The complaint alleges that these additional terms were material to consumers in deciding whether to lease a vehicle. The complaint alleges therefore that the failure to disclose or disclose adequately the additional terms is deceptive in violation of Section 5 of the FTC Act.

In addition, the complaint alleges violations of the Consumer Leasing Act (“CLA”) and Regulation M for failing to disclose or to disclose clearly and conspicuously certain costs and terms when advertising leases. Finally, the complaint alleges violations of the Truth in Lending Act (“TILA”) and Regulation Z for failing to disclose or to disclose clearly and conspicuously certain costs and terms when advertising credit.

The proposed order is designed to prevent the Respondent from engaging in similar deceptive practices in the future. Part I.A of the proposed order prohibits the Respondent from misrepresenting that it will pay any particular amount of the remaining loan or lease obligation on a consumer’s trade-in vehicle used to purchase, finance, or lease another motor vehicle, including representing that the Respondent will pay the entire remaining obligation on the trade-in vehicle when the consumer will actually be responsible for paying that amount. Part I.B of the proposed order prohibits Respondent from misrepresenting the material terms of any promotion or other incentive, and the nature, value, or amount of a promotion or other incentive, including, but not limited to, that Respondent will match a consumer’s tax refund for use as the down payment on the purchase of a vehicle. Part I.C prohibits the Respondent from misrepresenting the cost of: (1) leasing a vehicle, including, but not necessarily limited to, the total amount due at lease inception, the down payment, amount down, acquisition fee, capitalized cost reduction, any other amount required to be paid at lease inception, and the amounts of all monthly or other periodic payments; or (2) purchasing a vehicle with financing, including but not necessarily limited to, the amount or percentage of the down payment, and the repayment obligation over the full term of the loan, including any balloon payment. Part I.D prohibits the Respondent from misrepresenting any other material fact about the price, sale, financing, or leasing of any vehicle.

Part II of the proposed order prohibits Respondent from making any representation about any promotion or other incentive including, but not limited to, that Respondent will match a

consumer's tax refund for use as the down payment on the purchase of a vehicle, without disclosing clearly and conspicuously, the terms and limitations of such promotion or other incentive.

Part III of the proposed order requires Respondent to clearly and conspicuously make all of the disclosures required by CLA and Regulation M if they state relevant trigger terms, including the monthly lease payment or the amount of any payment or that any or no initial payment is required at lease inception. In addition, Part III prohibits any other violation of CLA or Regulation M.

Part IV of the proposed order requires that the Respondent clearly and conspicuously make all of the disclosures required by TILA and Regulation Z if they state the amount or percentage of any downpayment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge. In addition, Part IV prohibits the Respondent from stating a rate of finance charge without stating the rate as an "annual percentage rate" or the abbreviation "APR," using that term. Part IV also prohibits any other violation of TILA and Regulation Z.

Part V of the proposed order requires Respondent to keep copies of relevant advertisements and materials substantiating claims made in the advertisements. Part VI requires that Respondent provide copies of the order to certain of their personnel. Part VII requires notification to the Commission regarding changes in corporate structure that might affect compliance obligations under the order. Part VIII requires the Respondent to file compliance reports with the Commission. Finally, Part IX is a provision "sunsetting" the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order's terms.

By direction of the Commission.

Janice Podoll Frankle,
Acting Secretary.

[FR Doc. 2014-30650 Filed 12/30/2014 at 8:45 am; Publication Date: 12/31/2014]